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June 2, 2006

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

**Hearing Officer's Decision**

Name of Case: Personnel Security Hearing

Date of Filing: December 14, 2005

Case Number: TSO-0328

This decision concerns the eligibility of XXX X XXXXX (hereinafter referred to as "the Individual") to maintain an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled ACriteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.@ The local Department of Energy (DOE) security office (the LSO) suspended the Individual's access authorization under the provisions of Part 710. This decision considers whether the Individual's access authorization should be restored.<sup>1</sup> For the reasons stated below, the Individual's access authorization should be restored.

**I. BACKGROUND**

The present case concerns an Individual who has been diagnosed with Alcohol Abuse. The Individual does not dispute this diagnosis. The events leading to this proceeding began when DOE officials received information indicating that the Individual had been arrested on July 2, 2004, for Driving While Intoxicated (DWI). This DWI was the Individual's third alcohol-related arrest. He had previously been arrested for DWI on May 18, 2000 and on August 2, 1996 for Disorderly Conduct and Resisting Arrest for an incident that occurred when he was intoxicated. On March 8, 2005, a personnel security interview (PSI) of the Individual was conducted by a representative of the LSO. A transcript of this PSI appears in the Record as Exhibit 6. The Individual was then asked to submit to a forensic psychiatric examination by a DOE consultant psychiatrist (the DOE Psychiatrist). On July 18, 2005, the DOE Psychiatrist conducted an examination of the Individual. DOE Exhibit 4 at 1. On July 21, 2005, the DOE Psychiatrist issued a report in which he stated that the Individual meets the criteria for Alcohol Abuse. DOE Exhibit 4 at 7-8. The DOE Psychiatrist further opined that the Individual was not sufficiently

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<sup>1</sup> An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. ' 710.5. Such authorization will be referred to in this Decision as an access authorization or a security clearance.

rehabilitated and reformed to resolve the security concerns raised by his Alcohol Abuse. *Id.* at 8-9.

After receipt of the DOE Psychiatrist's Report, the LSO initiated an administrative review proceeding. *See* 10 C.F.R. ' 710.9. The LSO then issued a letter notifying the Individual that it possessed information that raised a substantial doubt concerning his eligibility for access authorization (the Notification Letter). The Notification Letter alleges that the Individual has "been, or is, a user of alcohol habitually to excess, or has been diagnosed by a board-certified psychiatrist, other licensed physician or a licensed clinical psychologist as . . . suffering from alcohol abuse.@ 10 C.F.R. ' 710.8(j).

The Individual filed a request for a hearing in which he admitted having a problem with alcohol, but indicated that he was taking action to reform and rehabilitate himself. This request was forwarded to the Office of Hearings and Appeals (OHA) and I was appointed as Hearing Officer.

At the hearing, the DOE Office presented one witness: the DOE Psychiatrist. The Individual presented three friends as his witnesses. The Individual also testified on his own behalf.

## II. STANDARD OF REVIEW

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. ' 710.27(a). The regulations state that A[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest.@ 10 C.F.R. ' 710.7(a). I have considered the following factors in rendering this opinion: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. ' ' 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

## III. FINDINGS OF LAW AND FACT

A reliable diagnosis of Alcohol Abuse raises significant security concerns under Criterion J. In the present case, the Individual does not dispute this diagnosis. Therefore, the LSO properly invoked this criterion.

A finding of derogatory information does not, however, end the evaluation of evidence concerning the individual's eligibility for access authorization. *See Personnel Security Hearing*

(Case No. VSO- 0244), 27 DOE & 82,797 (1999) (affirmed by OSA, 1999); *Personnel Security Hearing* (Case No. VSO-0154), 26 DOE & 82,794 (1997), *aff'd*, *Personnel Security Review* (Case No. VSA-0154), 27 DOE & 83,008 (1998) (affirmed by OSA, 1998). In the end, like all OHA Hearing Officers, I must exercise my common sense judgment in determining whether an individual's access authorization should be restored after considering the applicable factors prescribed in 10 C.F.R. ' 710.7(c). The issue before me is whether the Individual has submitted sufficient evidence of his rehabilitation or reformation to resolve the security concerns raised by his alcohol abuse.

The Individual testified that his last drink of alcohol occurred on February 6, 2005.<sup>2</sup> Transcript of Hearing, Case No. TSO-328 (Tr.) at 24. The Individual added that he is attending one-on-one counseling sessions on a weekly basis.<sup>3</sup> Tr. at 28-29. The Individual testified that he had learned techniques for staying sober from his counseling. Tr. at 29. The Individual also noted that he had attended 32 hours of court mandated group counseling in May 2000. Tr. at 29-30. The Individual noted that he had learned from the example of his parents' recovery from substance dependence. Tr. at 32-33, 36-38. The Individual testified that he intends to quit drinking forever. Tr. at 33-34. The Individual noted that he makes bad choices when he drinks. Tr. at 29, 33. The Individual also brought records of negative alcohol tests to the Hearing. These records indicated that the Individual had been tested for alcohol use on nine occasions: June 7, 2005; June 14, 2005; June 29, 2005; July 7, 2005; July 26, 2005; August 2, 2005; August 16, 2005; August 25, 2005 and September 14, 2005. These records indicated that on each of these occasions, the Individual tested negative for alcohol use. Tr. at 50, 51.

At the hearing, the DOE Psychiatrist observed the testimony of the Individual and his three friends. The DOE Psychiatrist was then called to the stand. The DOE Psychiatrist testified that at the time that he had examined the Individual and prepared his report, in July of 2005, the Individual was

. . . [K]ind of in early sobriety. He was already five months into not drinking, so he was by his behavior, showing that he thought he had a problem and was stopping drinking to deal with it. In his speech, he still often, I thought, had a little bit of minimization or denial about the problems alcohol had posed for him, and would pose a risk for the future. . . . [H]e was taking the right steps, and still I got the feeling at the time I saw him, [he]wasn't quite sure that he had a problem with alcohol, but he was willing to go along with the plan of people who said he did.

Tr. at 42. The DOE Psychiatrist testified that the Individual has now apparently maintained his

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<sup>2</sup> At the time of the Hearing, the Individual had abstained from using alcohol for a period of 13 months.

<sup>3</sup> The Individual had ten counseling sessions with the Counselor during the period beginning in March 2005 and ending in May 2005. The Individual resumed weekly counseling sessions in November 2005. Request for Hearing.

sobriety for over a year, and is attending one on one counseling sessions with a counselor that the DOE Psychiatrist knows and respects. Tr. at 47-49. The DOE Psychiatrist further noted “. . . he’s now more convinced that he . . . isn’t able to drink, and he’s got to keep sober.” Tr. at 49-50. Most importantly, the DOE Psychiatrist testified that there is, in his opinion, adequate evidence that the Individual is reformed and rehabilitated from his Alcohol Abuse. Tr. at 50.

In summary, the Individual has convincingly shown that he understands that he has a problem with alcohol and therefore has abstained from using alcohol since February 7, 2005. The Individual has also testified that he intends to refrain from using alcohol in the future. Moreover, the DOE Psychiatrist who diagnosed the Individual with Alcohol Abuse has testified that he now believes that the Individual is rehabilitated and reformed. Accordingly, the Individual has successfully resolved the security concerns raised by his alcohol abuse.

#### **IV. CONCLUSION**

For the reasons set forth above, I conclude that the Individual has resolved the security concerns raised under Criterion J. Therefore, the Individual has demonstrated that restoring his access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, the Individual's access authorization should be restored at this time. The LSO may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. ' 710.28.

Steven L. Fine  
Hearing Officer  
Office of Hearings and Appeals

Date: June 2, 2006